

As gross receipts from the sale of tangible personal property under a conditional sale transaction are taxable, so too are the related delivery charges unless it can be shown that such charges were separately agreed to between the buyer and the seller and are reflective of the costs of delivery. See 86 Ill. Adm. Code 130.415 (This is a GIL.)

July 10, 2003

Dear Xxxxx:

This letter is in response to your letter dated March 18, 2003 in which you request a Private Letter Ruling on the taxation of installation and shipping and handling charges. Due to the limited information contained in your letter and the current audit of your company, we are unable to provide you with a Private Letter Ruling. However, we are responding to your request with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

AAA is a STATE corporation registered to do business in the State of Illinois. We are in need of an official opinion as to the taxability of installation and shipping/handling charges as they relate to leased equipment.

We lease commercial equipment, including high-tech computer equipment and software, under two types of leasing transactions: a true lease and conditional sale.

The specific installation we are inquiring about is that of the high-tech computer equipment and software. The high-tech computer equipment can range from robotic silos (small, medium, and large tape libraries), tape drives, and disc drives. A large robotic silo can measure eight by twelve feet and take 72 hours to install (three men, three days, eight hours each day). The drives can range in size from a desk drawer to a six by four foot cabinet and take less time to install. The installation of software is also a complicated task that can take weeks or months depending on the needs of our customer. While the installation is separately stated, due to its nature and complexity, it is not an optional cost for our customers.

In addition to the installation of high-tech computer equipment and software, please answer the above questions for commercial equipment such as, but not limited to, manufacturing equipment, phone systems/office equipment, and furniture and fixtures.

According to IAC, Section 130.450 and 130.415, receipts from installation and shipping/handling charges are deductible from the selling price if such charges are contracted for separately. In addition, public copies of private letter rulings indicate that

the customer's initials next to the separately stated charges is acceptable by the Department to consider them as contracted for separately.

In a true lease situation, we, the lessor, are considered the end user/purchaser of the equipment. In this scenario, can we, the lessor, initial the separately stated installation and shipping/handling charges on the vendor invoice in order to consider them to be contracted for separately and not subject to sales tax?

In a conditional sale transaction, the lessee is considered the end user of the property. In our situation, the lessee does not see the vendor invoice. The only document they see is our lease schedule (see Exhibit A), which lists each item separately with the corresponding rent. If the lessee initials the installation and shipping/handling charges on the lease schedule can we consider them contracted for separately and not subject to use tax? In such case, the monthly rental amount invoiced to the customer would consist of a taxable (equipment) and non-taxable (installation) component. However, the presentation of the monthly invoice will reflect a lump sum rent amount and not the individual components of the rent.

AAA is currently under going an audit with the Department of Revenue. To the best of our knowledge, the Department has not previously ruled on this issue for AAA or it's predecessors. Nor did AAA submit the same or similar issue and withdraw it before a ruling was issued.

Thank you for your time and consideration in this matter. If additional information is needed I can be contacted at the above address.

We are unable to respond to the your letter in the manner you requested. As you are currently under audit with the Illinois Department of Revenue, we must decline to provide an opinion as to the taxability of the charges about which you are inquiring. Please find below general information regarding the taxation of installation and shipping and handling charges, as well as an explanation of the tax consequences under true lease and conditional lease transactions.

Transportation and delivery charges, also designated as shipping and handling charges, are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold and the charges are actually reflective of the costs of shipping. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax. See Department regulation 86 Ill. Adm. Code 130.415, a copy of which is enclosed for your use.

As you will note under Section 130.415(d), if the seller and the buyer agree upon the transportation and delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the selling price of the tangible personal property, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. Merely listing the charges separately on an invoice without more evidence is insufficient. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

Likewise, installation charges are not taxable if it can be shown that the charges are agreed to separately from the selling price of the tangible personal property sold. An itemized invoice signed by the purchaser so as to make it a contract reflecting the intentions of the seller and purchaser would be sufficient. In such case the receipts from the installation charge are not a part of the selling price of the tangible personal property sold, but instead such charge is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability. See Department regulation 86 Ill. Adm. Code 130.450, a copy of which is enclosed for your use. Please also refer to the enclosed copy of 86 Ill. Adm. Code 130.1935(b), the Department's regulation governing sales tax on the sale of computer software and which specifically addresses taxation of software installation charges.

According to your letter, you are requesting advice on the taxability of installation and shipping and handling charges related to leased commercial computer equipment and software under two separate lease transactions that your company engages in: a true lease transaction and a conditional sale transaction.

In Illinois, lessors of tangible personal property under a true lease, other than automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. See enclosed copies of 86 Ill. Adm. Code 130.220 and 130.2010. A true lease agreement exists if at the end of the lease term there is no option to purchase the property and the property is returned to the lessor. If there is an option to purchase in the lease agreement, it must be for the fair market value of the property in order to maintain the character of the true lease. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors' cost price of the property. Since lessors are considered the end users of the property and have paid Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges.

As stated, Illinois does not impose Retailers' Occupation Tax or Use Tax on rental receipts in a true lease situation. Since a lessee under a true lease incurs no tax liability on the lease of tangible personal property, the lessee generally incurs no such tax liability on any related lease charges such as lease termination fees, service fees, legal fees late payment fees, disposition fees, or shipping and handling charges.

Where a lessor in leasing tangible personal property actually transfers the property to the lessee for a nominal purchase option amount, or for no further consideration, the lessor has made a conditional sale of the property and all payments received by the lessor are subject to the Retailers' Occupation Tax.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in item 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our website mentioned above.

Sincerely,

Dana Deen Kinion
Associate Counsel

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